

by an employer's drug testing program who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual's confirmed positive test result together with his or her medical history and any other relevant biomedical information.

Positive rate means the number of positive results for random drug tests conducted under this part plus the number of refusals of random tests required by this part, divided by the total number of random drug tests conducted under this part plus the number of refusals of random tests required by this part.

Prohibited drug means marijuana, cocaine, opiates, amphetamines, or phencyclidine.

Railroad means all forms of non-highway ground transportation that run on rails or electromagnetic guideways, including (1) commuter or other short-haul rail passenger service in a metropolitan or suburban area, as well as any commuter rail service which was operated by the Consolidated Rail Corporation as of January 1, 1979, and (2) high speed ground transportation systems that connect metropolitan areas, without regard to whether they use new technologies not associated with traditional railroads. Such term does not include rapid transit operations within an urban area that are not connected to the general railroad system of transportation.

Recipient means an entity receiving Federal financial assistance under section 3, 9, or 18, of the FT Act, or under section 103(e)(4) of title 23 of the United States Code.

Refuse to submit means that a covered employee fails to provide a urine sample as required by 49 CFR part 40, without a genuine inability to provide a specimen (as determined by a medical evaluation), after he or she has received notice of the requirement to be tested in accordance with the provisions of this part, or engages in conduct that clearly obstructs the testing process.

Safety-sensitive function means any of the following duties:

(1) Operating a revenue service vehicle, including when not in revenue service;

(2) Operating a nonrevenue service vehicle, when required to be operated by a holder of a Commercial Driver's License;

(3) Controlling dispatch or movement of a revenue service vehicle;

(4) Maintaining a revenue service vehicle or equipment used in revenue service, unless the recipient receives section 3 funding and is in an area of less than 50,000 in population or section 18 funding and contracts out such services; or

(5) Carrying a firearm for security purposes.

Small operator means a recipient or subrecipient primarily operating in a nonurbanized area or in an urbanized area of less than 200,000 in population.

Vehicle means a bus, electric bus, van, automobile, rail car, trolley car, trolley bus, or vessel. A *mass transit vehicle* is a vehicle used for mass transportation or for ancillary services.

Verified negative (drug test result) means a drug test result reviewed by a medical review officer and determined to have no evidence of prohibited drug use.

Verified positive (drug test result) means a drug test result reviewed by a medical review officer and determined to have evidence of prohibited drug use.

[59 FR 7589, Feb. 15, 1994, as amended at 59 FR 62230, Dec. 2, 1994; 60 FR 12297, Mar. 6, 1995; 60 FR 39620, Aug. 2, 1995; 61 FR 37224, July 17, 1996]

§ 653.9 Preemption of State and local laws.

(a) Except as provided in paragraph (b) of this section, this part preempts any State or local law, rule, regulation, or order to the extent that:

(1) Compliance with both the State or local requirement and any requirement in this part is not possible; or

(2) Compliance with the State or local requirement is an obstacle to the accomplishment and execution of any requirement in this part.

(b) This part shall not be construed to preempt provisions of State criminal law that impose sanctions for reckless conduct leading to actual loss of life, injury, or damage to property,

whether the provisions apply specifically to transportation employees or employers or to the general public.

§ 653.11 Other requirements imposed by an employer.

An employer may not impose requirements that are inconsistent with, contrary to, or frustrate the provisions of this part.

§ 653.13 Starting date for drug testing programs.

(a) *Large employers.* Each recipient operating primarily in an urbanized area of 200,000 or more in population on March 17, 1994 shall implement the requirements of this part beginning on January 1, 1995.

(b) *Small employers.* Each recipient operating primarily in a nonurbanized area or in an urbanized area of 200,000 or less in population on March 17, 1994 shall implement the requirements of this part beginning on January 1, 1996.

(c) An employer shall have an anti-drug program that conforms to this part by January 1, 1996, or by the date the employer begins operations, whichever is later.

[59 FR 7589, Feb. 15, 1994, as amended at 60 FR 12297, Mar. 3, 1995]

Subpart B—Program Requirements

§ 653.21 Requirement to establish an anti-drug program.

Each employer shall establish an anti-drug program consistent with the requirements of this part.

§ 653.23 Required elements of an anti-drug testing program.

An anti-drug program shall include the following:

(a) A statement describing the employer's policy on prohibited drug use in the workplace, including the consequences associated with prohibited drug use. This policy statement shall include all of the elements specified in § 653.25. Each employer shall disseminate the policy consistent with the provisions of § 653.27.

(b) An education and training program which meets the requirements of § 653.29.

(c) A testing program, as described in § 653.31 that meets the requirements of this part and part 40 of this title.

(d) Procedures for assessing the covered employee who has a verified positive drug test result as described in § 653.37.

§ 653.25 Policy statement contents.

The policy statement shall be adopted by the local governing board of the employer or operator, be made available to each covered employee, and shall include, at a minimum, detailed discussion of:—

(a) The identity of the person designated by the employer to answer employee questions about the anti-drug program.

(b) The categories of employees who are subject to the provisions of this part.

(c) Specific information concerning the behavior that is prohibited by this part.

(d) The specific circumstances under which a covered employee will be tested for prohibited drugs under the provisions of this part.

(e) The procedures that will be used to test for the presence of drugs, protect the employee and the integrity of the drug testing process, safeguard the validity of the test results, and ensure the test results are attributed to the correct covered employee.

(f) The requirement that a covered employee submit to drug testing administered in accordance with this part.

(g) A description of the kind of behavior that constitutes a refusal to take a drug test and a statement that such a refusal constitutes a verified positive drug test result.

(h) The consequences for a covered employee who has a verified positive drug test result or refuses to submit to a drug test under this part, including the mandatory requirements that the covered employee be removed immediately from his or her safety-sensitive function and be evaluated by a substance abuse professional.

(i) If the employer implements elements of an anti-drug program that are in addition to this part (See § 653.31), the employer shall give each covered